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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ARIZONANS FOR OFFICIAL ENGLISH
and ROBERT D. PARK,

Petitioners,

v.

STATE OF ARIZONA, MARIA-KELLEY F. YNIGUEZ,
JAIME P. GUTIERREZ, and ARIZONANS AGAINST
CONSTITUTIONAL TAMPERING,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF HUMAN RIGHTS WATCH, *AMICUS CURIAE*, IN SUPPORT OF RESPONDENTS

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BRIEF OF HUMAN RIGHTS WATCH, *AMICUS CURIAE*, IN SUPPORT OF RESPONDENTS

This *amicus* brief is submitted, with the consent of counsel for all parties, on behalf of Human Rights Watch.

THE INTEREST OF HUMAN RIGHTS WATCH AS *AMICUS CURIAE*

Human Rights Watch is an independent nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki Accords. It is the largest international human rights organization based in the United States. In working to promote respect for human rights, Human Rights Watch investigates, documents and publicizes human rights violations throughout the world. It has concluded fact-finding missions in scores of countries and published hundreds of reports of its findings. By exposing and calling attention to human rights abuses, Human Rights Watch seeks to bring international public opinion to bear upon offending governments and thus to encourage an end to abusive practices.

The Human Rights Watch Free Expression Project (formerly known as the Fund for Free Expression) has been monitoring the issue of language rights for several years and, in fact, has published one report specifically covering disturbing trends affecting the right to speak a non-English language in the United States. *See* Fund for Free Expression, *"English-Only": The Attack on Minority Language Speakers in the United States* (1992). In addition, through its regional divisions, Human Rights Watch has monitored the repression of linguistic minorities in countries ranging from Sri Lanka to Bulgaria. The results of this monitoring have been published in numerous books and reports, which, taken as a whole, attest to the compelling link between language repression and efforts to repress linguistic minorities' ethnic and cultural identity. *See, e.g.*, Human Rights Watch, *Slaughter Among Neighbors: The*

Political Origins of Communal Violence (1995); Helsinki Watch, *Destroying Ethnic Identity: The Turks of Bulgaria* (1986).

Human Rights Watch's organizational mission, informed by a detailed knowledge of the nature and extent of the repression of linguistic minorities around the world, leads it to be concerned about the outcome of this case—an outcome that will send a powerful message about this country's position on linguistic human rights.

SUMMARY OF ARGUMENT

Article XXVIII of the Arizona Constitution employs unacceptable means to establish English as the "official" language of the State of Arizona. In contrast to the aspirational tone of its Section 2, which urges the state "to preserve, protect and enhance the role of the English language," Article XXVIII "promotes" the use of English by virtually banning from the public sector the use of all other languages, including those spoken by Arizona's sizeable community of linguistic minorities. By so doing, Article XXVIII unreasonably restricts the ability of non-English speakers to communicate with their government, thereby infringing their right to freedom of expression, and discriminates against them by erecting needless obstacles to their access to government, public services and education.

The repressive and discriminatory means Article XXVIII employs to promote the use of English render it incompatible with international human rights standards, specifically, those governing language rights and the rights of linguistic minorities. These standards, embodied in binding international treaties, as well as international declarations, resolutions and recommendations, not only prohibit discrimination against linguistic minorities, but affirm the right of *all* individuals to use their own languages in a variety of public and private arenas. Article XXVIII, by effectively banning communications between non-English speakers and multilingual government employees, is profoundly inconsistent with these international standards.

The justifications for Article XXVIII urged by the petitioners—specifically, the promotion of Arizona's legitimacy and unity—are not borne out by the experience of the international community. Indeed, past experience overwhelmingly demonstrates that restrictive language policies produce effects directly contrary to the state interests that the petitioners believe Article XXVIII would serve. As history shows, restrictions on the use of minority languages have figured prominently in the policies of the world's most repressive regimes—often as part of campaigns to marginalize, persecute or forcefully assimilate disfavored ethnic and cultural minorities. Arizona cannot enhance its legitimacy by pursuing policies emblematic of oppression. Furthermore, as numerous examples attest, restrictive language policies—far from fostering internal unity—inspire resistance, balkanization and discord, often leading to violent conflict between linguistic minorities and members of the dominant language group.

Article XXVIII's unjustifiable indifference to widely-recognized international human rights standards stands in stark contrast to this nation's historical commitment and leadership with respect to the protection of human rights—a fact which should inform the Court's decision in this case. It would indeed be regrettable if a measure so clearly inconsistent with this nation's international obligations were permitted to stand.

ARGUMENT

I. ARTICLE XXVIII IS INCONSISTENT WITH INTERNATIONAL STANDARDS REGARDING LANGUAGE RIGHTS

A. The Importance of Language Rights

Language rights are basic human rights.[1] Because language is both a rudiment of human consciousness[2] and one of the major sources of cultural identity, the protection of language rights is essential to the protection of human dignity.[3] Consequently, the deprivation of language rights constitutes a fundamental human rights violation.

Language rights have been defined to include, among other things: the right to use one's own language;[4] the ability to identify positively with one's mother tongue and have that identification respected by others—whether one's mother tongue is a majority or a minority language;[5] and freedom from both individual and group discrimination on the basis of language.[6] Linguistic majorities, *i.e.*, speakers of a dominant language, typically enjoy the full spectrum of language rights. By contrast, linguistic minorities throughout the world must constantly contend with state efforts to deprive them of their language rights.[7]

The poverty of language rights experienced by many linguistic minorities is due, in large part, to the historical and widespread repression of minority languages by speakers of dominant languages. Repression of minority languages is almost always motivated by the desire to repress, marginalize or forcibly assimilate the *speakers* of those languages, who are often perceived as threats to the political unity and territorial integrity of the state.[8] Such repression need not be violent to be effective. It can be achieved, for example, by denying linguistic minorities opportunities to employ their mother tongues, or by mandating that community processes and enterprises—especially those involving knowledge and power—be conducted exclusively in languages alien to certain members of the community.[9]

The deprivation of language rights is particularly pernicious because language is so central to the human experience. Consequently, the loss of language rights often entails the loss of other rights as well, including freedom of expression, due process, the right to vote, the right to fair political representation, the right to a fair trial, access to education,

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[1] *See* Robert Phillipson, Mart Rannut & Tove Skutnabb-Kangas, *Introduction* to *Linguistic Human Rights: Overcoming Linguistic Discrimination* 1-3 (Tove Skutnabb-Kangas & Robert Phillipson eds., 1994) [hereinafter Phillipson] (discussing the concept of "linguistic human rights"); Mala Tabory, *Language Rights as Human Rights*, 10 Isr. Y.B. on Hum. Rts. 167 (1980).

[2] Myres S. McDougal, Harold D. Lasswell & Lung-chu Chen, *Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity* 713 (1980) [hereinafter McDougal].

[3] Joseph P. Gromacki, *The Protection of Language Rights in International Human Rights Law: A Proposed Draft Declaration of Linguistic Rights*, 32 Va. J. Int'l L. 515 (1992).

[4] *Id.* at 516; Manfred W. Wenner, "The Politics of Equality Among European Linguistic Minorities," *in Comparative Human Rights* 184, 193 (Richard P. Claude ed., 1976); Tove Skutnabb-Kangas, *Language, Literacy and Minorities*, A Minority Rights Group Report, Nov. 1990, at 9. Both Wenner and Skutnabb-Kangas argue that the right to use one's own language *vis-à-vis the government* should be considered a basic linguistic human right.

[5] Phillipson, *supra* note 1, at 2.

[6] Gromacki, *supra* note 3, at 516.

[7] *See* Phillipson, *supra* note 1, at 1-2.

[8] *Id.* at 4-5; 2 Alexander Ostrower, *Language, Law, and Diplomacy: A Study of Linguistic Diversity in Official International Relations and International Law* 665-67 (1965).

[9] McDougal, *supra* note 2, at 714.

access to information, and the right to cultural identity.[10] The right to vote, for example, means nothing if the voter cannot understand the ballot.[11] Similarly, due process inherent in a judicial or administrative proceeding becomes hollow if the proceeding is held exclusively in an official language that the petitioner does not understand.[12]

B. International Protection for Language Rights

The international human rights community has responded vigorously to the widespread violation of language rights. Since the end of World War I, protection for language rights and the rights of linguistic minorities has figured prominently in numerous sources of international human rights law. Some of the most important protections are found in treaties to which the United States is a party. Others appear in international declarations, resolutions and recommendations. Although these instruments, unlike treaties, are not technically binding, they establish broadly recognized standards for and inform the conduct of the United States and other nations with respect to linguistic human rights.

International instruments contain two different classes of language rights provisions. The first class consists of provisions that identify language as an impermissible basis of discrimination. These nondiscrimination provisions are profoundly offended by Article XXVIII's impairment of the ability of linguistic minorities to do what the State's English-speakers may continue to do, namely, communicate with State employees in a language understood by *both* participants to the conversation. As one scholar has observed:

> [B]y limiting the language of government services, a state imposes a condition on access to those services. By so doing, a state is creating an inequality between those for whom the language of service is their primary language, and those for whom it is not. The former have no difficulties in complying with this condition for access to the services, whereas the latter will, either because they do not understand the language, because they have difficulty in responding properly in the language, or even because it imposes on them an additional burden in exercising their right to these services. In other words, there is a distinction based on language that creates an inequality between two groups of individuals. This distinction may in addition constitute discrimination if it is not reasonable or justifiable in the particular circumstances of the case.[13]

The second class of provisions includes *affirmative* protections for language rights. Interpreted expansively, these provisions guarantee the right to transmit and receive information in one's own language. Interpreted narrowly, they prohibit governments from obstructing communications between a willing speaker and a willing listener. Under either interpretation, these provisions would condemn the unreasonable restrictions Article XXVIII imposes on the use of languages other than English.

C. Sources of Protection for Language Rights in International Law

Although the international instruments protecting language rights and the rights of linguistic minorities number several dozen, it suffices to recall those that most clearly demonstrate Article XXVIII's incompatibility with international human rights law and this country's obligations thereunder.

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[10] *Id.* at 717-18; Phillipson, *supra* note 1, at 2; Gromacki, *supra* note 3, at 519, 534-35.

[11] *See* McDougal, *supra* note 2, at 717 & n.19.

[12] *Id.* at 718.

[13] Fernand de Varennes, *Language and Freedom of Expression in International Law*, 16 Hum. Rts. Q. 163, 175 n.41 (1994) (concluding that an Irish policy requiring English-speaking civil servants to submit their applications for children's allowances on a form written in the Irish language arguably violated Article 26 of the International Covenant on Civil and Political Rights, discussed *infra* note 31 and accompanying text, which prohibits discrimination on the basis of language).

1. The United Nations Charter and The Universal Declaration of Human Rights

The United Nations Charter, entered into force on October 24, 1945, contains four provisions directing the U.N. to promote respect "for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[14] Consistent with this mandate, the U.N. General Assembly, on December 10, 1948, adopted the Universal Declaration of Human Rights.[15] Although initially only declaratory, the Declaration, due to its widespread acceptance, has arguably achieved the status of binding customary law.[16]

Article 2 of the Declaration provides that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as . . . language"—a provision fortified by the equal protection guarantee of Article 7. Although the Declaration contains no provision expressly protecting the right to use one's own language, such protection is readily inferred from other provisions. Article 19, for example, guarantees the freedom of expression, which "includes [the] freedom . . . to seek, receive and impart information." As one scholar has observed, "anchored" in Article 19 is "the right of any group to use its own language."[17] Similarly, Article 26, which governs the right to education, would be "non-sensical were it to exclude

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[14] U.N. Charter art. 1, ¶ 3; art. 13, ¶ 1(b); art. 55(c); art. 76(c).

[15] G.A. Res. 217 A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810, at 71-77 (1948).

[16] *Filartiga* v. *Pena-Irala*, 630 F.2d 876, 882-83 (2d Cir. 1980) (and sources cited therein); *Fernandez* v. *Wilkinson*, 505 F. Supp. 787, 796-97 (D. Kan. 1980) (and sources cited therein), *aff'd*, 654 F.2d 1382 (10th Cir. 1981); Humphrey Waldock, "Human Rights in Contemporary International Law and the Significance of the European Convention," *in The European Convention on Human Rights* 1, 15 (Brit. Inst. of Int'l & Comp. L. ed., 1965).

[17] J.J. Lador-Lederer, *International Group Protection: Aims and Methods in Human Rights* 25 (1968).

development of the vernacular features of the community."[18] Other rights secured by the Declaration—including the right "of equal access to public service," the right "to take part in the Government of [one's] country," the right "to an effective remedy by the competent national tribunals," and the right "to a fair and public hearing by an independent and impartial tribunal" with respect to criminal charges[19]—would be rendered hollow if they did not include, at the very least, the right to use the language with which one is familiar and proficient.

2. The Sub-Commission on Prevention of Discrimination and Protection of Minorities

Established in 1946 by the U.N. Commission on Human Rights, the Sub-Commission, in addition to its other duties, has been charged with the responsibility

> to undertake studies, particularly in the light of the Universal Declaration of Human Rights, concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and *linguistic* minorities.[20]

The Sub-Commission's mandate, which contemplates the *protection* of linguistic minorities, thus exceeds the more modest directive of Article 2 of the Universal Declaration, which prohibits discrimination on the basis of language.

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[18] *Id.*

[19] Universal Declaration of Human Rights, *supra* note 15, art. 21, ¶ 2; art. 21 ¶ 1; art. 8; art. 10.

[20] CHR Res. on the Prevention of Discrimination and the Protection of Minorities, *in Report of the Commission on Human Rights in 1949*, 5th Sess., U.N. Doc. E/1371, ¶ 13, § A (1949) (emphasis added). The Sub-Commission regards the repression of linguistic minorities as a serious breach of international law. For example, on August 20, 1993, it passed a resolution condemning the state of Kosova for "banning of the use of the Albanian language, notably within the public administration and services," a practice which the Sub-Commission regarded as "a form of ethnic cleansing." U.N. Doc. E/CN.4/1994/2; E/CN.4/Sub.2/1993/45, at 36.

The Sub-Commission has pursued this ambitious mandate in a variety of ways, perhaps most notably, by commissioning the landmark 1979 report *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*.[21] This influential report, authored by Special Rapporteur Francesco Capotorti, "constitute[s] the most comprehensive and significant analysis to date of the international, regional and national implementation of language rights."[22]

The Special Rapporteur's report included a comprehensive analysis of the use of minority languages in "official matters" in nations all over the world.[23] Concerned about the inability of linguistic minorities to communicate with and receive information from their governments in their own languages, Capotorti praised the efforts of over two dozen nations in Europe, Asia and the Americas that had taken steps to accommodate the use of minority languages in written laws, in the civil and criminal courts, and in oral and written communications with executive and administrative authorities.[24] Accordingly, the report concluded that:

> in all cases where a minority language does not have official status, adequate facilities should be made available to members of the minority linguistic group to ensure that they are not at a disadvantage merely because they speak a different language from the majority. In judicial proceedings and relations with the authorities, for example, provision should be made for a system of translation at the expense of the State.[25]

A fortiori, the report would have been highly critical of Arizona's Article XXVIII, which, with a few limited exceptions, not only fails to provide—but purposefully *prohibits*—accommodations for Arizonans who do not understand English.

3. The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (the "ICCPR"), a treaty ratified by the United States in 1992,[26] was the first international instrument expressly to protect the affirmative rights of linguistic minorities. Although the substantive provisions of the ICCPR are not self-executing, *i.e.*, they do not create private causes of action in domestic courts,[27] the United States has formally stated that its courts may seek guidance from the ICCPR in interpreting American law.[28] Furthermore, upon ratification, the United States declared that it was in full compliance with, among other things, the provisions of the ICCPR governing language rights[29]—thereby implicitly obligating itself to *remain* in compliance.

Like the Universal Declaration of Human Rights, the ICCPR prohibits discrimination on any ground, including language, with

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[21] Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, U.N. Doc. E/CN.4/Sub.2/384/Rev.1 (1979).

[22] Gromacki, *supra* note 3, at 541-42.

[23] *See* Capotorti, *supra* note 21, ¶¶ 439-479. The report included a similar analysis with respect to the use of minority languages in primary and secondary public schools. *See id.* ¶¶ 498-519.

[24] *Id.* ¶¶ 439-479; *see also* Skutnabb-Kangas, *supra* note 4, at 28-29 (describing laws accommodating the use of minority languages in government affairs and public schools in Sweden, India, South Africa, Spain, and the former Yugoslavia).

[25] Capotorti, *supra* note 21, ¶ 603.

[26] The International Covenant on Civil and Political Rights, *adopted by the General Assembly* Dec. 16, 1966, 999 U.N.T.S. 171.

[27] Senate Comm. on Foreign Relations, International Covenant on Civil and Political Rights, S. Exec. Doc. No. 23, 102d Cong., 2d Sess. 19, 23 (1992).

[28] *Report of the Human Rights Committee*, U.N. GAOR, 50th Sess., Supp. No. 40, at 54, U.N. Doc. A/50/40 (1995).

[29] *See* Human Rights Watch & American Civil Liberties Union, *Human Rights Violations in the United States: A Report on U.S. Compliance with The International Covenant on Civil and Political Rights* 2 (1993).

respect to the rights secured in the instrument itself.[30] But the ICCPR goes one step further. Article 26, the treaty's equal protection clause, prohibits discrimination on any ground, such as language, in the application of *all* rights—not simply those guaranteed by the Covenant.[31] Indeed, the principle of non-discrimination is so central to the ICCPR, that Article 4(1), which permits the States Parties to derogate their Covenant obligations "[i]n time of public emergency which threatens the life of the nation," forbids any derogation that involves discrimination based on race, colour, sex, language, religion or social origin.

In addition, the ICCPR contains several provisions that expressly or implicitly guarantee the right to use one's own language. One of the most important is Article 19, which guarantees the right to freedom of expression. In a 1993 opinion interpreting Article 19, the Human Rights Committee—the judicial body established under Part IV of the ICCPR to consider reports from and hear complaints against the States Parties—made clear that claims challenging restrictions on the right to use minority languages fall within the ambit of this important provision. The Committee ruled that a Quebec law requiring commercial signs to be written in French, a language not normally employed by the petitioners and their clients, violated the petitioners' Article 19 right to freedom of expression.[32] Although the Committee's holding was confined to expression in the private sector, the opinion made clear that choice of language constitutes an expressive act for Article 19 purposes.

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[30] *See* ICCPR, *supra* note 26, art. 2(1).

[31] The full text of Article 26 provides:

> All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[32] *Ballantyne, Davidson & McIntyre* v. *Canada*, CCPR/C/47/D/359/1989 & 385/1989/Rev.1 (Mar. 31, 1993).

The mandate of Article XXVIII of the Arizona Constitution that government functions and actions be conducted exclusively in a language in which many members of the community normally do not, and perhaps cannot, express themselves, thus seems wholly inconsistent with Article 19's guarantee of the right to freedom of expression. As defined by paragraph 2 of Article 19, the freedom of expression includes the "freedom to seek, receive and impart information." By prohibiting even a willing government employee from responding to an individual in the only language the latter comprehends, Article XXVIII would impair the ability of *both* parties to seek, receive and impart information. Importantly, members of Arizona's dominant language group would experience no corresponding impairment of the right to freedom of expression, thus rendering Article XXVIII inconsistent with the ICCPR's nondiscrimination provisions, which require that Covenant rights be secured without distinction as to language.[33]

Equally central to the ICCPR's language rights regime is the ground-breaking Article 27, which provides:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

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[33] Although the States Parties may derogate their Article 19 obligations when "necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order, . . . or of public health or morals," petitioners make no claim—nor could they—that such circumstances are present here. *See* Abid Hussain, *Report of the Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. E/CN.4/1995/32, ¶¶ 38-55 (1994) (the derogation clause in Article 19 is to be interpreted narrowly). Indeed, Article XXVIII would *imperil* rather than protect some of Article 19's justifications for derogation. For example, as we argue below, *see infra* pt. II.B, measures that repress minority languages—far from preserving public order—generally exacerbate the conditions that lead to disorder.

Interpreted broadly, Article 27 obligates the States Parties to take affirmative steps to ensure that language remains a source of *value* to linguistic minorities. This was the interpretation favored by Special Rapporteur Capotorti when, with Article 27 in mind, he urged the international community to make accommodations for linguistic minorities to communicate with their governments in their own languages.[34] Article XXVIII, of course, would foreclose any such accommodations.

But even under a narrow interpretation, Article 27 is demeaned by Arizona's Article XXVIII. Interpreted narrowly, *i.e.*, in a manner that imposes no affirmative obligations on the States Parties, Article 27 would condemn any law or policy that renders participation in a minority language community less valuable. By prohibiting linguistic minorities from using their own languages in interactions with multilingual State employees, Article XXVIII surely reduces the value of those languages to the groups that speak them.

Moreover, when read in conjunction with the ICCPR's equal protection and nondiscrimination provisions (as every provision in the ICCPR must be), Article 27 prohibits a state from permitting one group to use its language while, in identical circumstances, forbidding another to do so. Article XXVIII, which impedes linguistic minorities—but *not* members of the dominant language group—from conversing with State employees

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[34] *See* Capotorti, *supra* note 21, ch. V, § 9 (discussing the implementation of the principles set forth in Article 27). This "activist" approach is consistent with Capotorti's general understanding of the States Parties' obligations under Article 27:

> In order to give effect to the rights set forth in article 27 of the Covenant, active and sustained measures are required from [the] States. A purely passive attitude on their part would render those rights ineffective.

Id. ¶ 588; *see* Louis B. Sohn & Thomas Buergenthal, *International Protection of Human Rights* 319-23 (1973) (discussing Capotorti's interpretation of Article 27).

in their own language, is thus contrary to the principle of nondiscrimination that is at the heart of the ICCPR.

In addition to Articles 19 and 27, the ICCPR contains several provisions from which the right to use one's language may be inferred. Article 25, for example, provides that "[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2[35] and without unreasonable restrictions:" to vote, to take part in the conduct of public affairs, and to have access to public service. Other provisions of the ICCPR guarantee the right to an effective remedy,[36] and the right "to recognition everywhere as a person before the law."[37] These rights, all intimately linked to the ability to use in official as well as private communications a language with which one has familiarity and proficiency, are no less diminished by Article XXVIII than are the ICCPR's *express* language rights provisions.

4. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

On December 18, 1992, the U.N. General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[38] Thirty-six nations sponsored the resolution urging passage of the Declaration, including the United States. Adopted by

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[35] Article 2 requires the States Parties to respect all of the rights set forth in the ICCPR without distinction as to, among other things, language. *See supra* note 30 and accompanying text.

[36] ICCPR, *supra* note 26, art. 3(a).

[37] *Id.* art. 16.

[38] The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, U.N. GAOR, 47th Sess., 3d Comm., Annex, U.N. Doc. A/47/678/Add.2 (1992).

consensus—"a fact which contributes greatly to [its] force"[39]—the Declaration represents the most sweeping statement by the U.N. to date regarding the protection of linguistic minorities and language rights.

Inspired by Article 27 of the ICCPR, the Declaration places numerous obligations upon the Member States with respect to linguistic human rights. Under the Declaration, Member States are required, among other things, to: "protect the existence and the . . . linguistic identity of minorities within their respective territories and . . . encourage conditions for the promotion of that identity"; ensure that linguistic minorities "have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue"; "create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their . . . language"; plan and implement "[n]ational policies and programmes . . . with due regard for the legitimate interests of persons belonging to [linguistic] minorities"; and take measures "to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law." The Declaration further provides that persons belonging to linguistic minorities have "the right to participate effectively in . . . public life" and "the right . . . to use their own language, in private and in public, freely and without interference or any form of discrimination."[40]

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Through its membership in the United Nations, its adherence to treaties, and its leadership in the international human rights community, the United States has actively condemned human rights violations wherever and whenever they occur. It would be both ironic and regrettable if a domestic law such as

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[39] Patrick Thornberry, "The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis and Observations," *in The UN Minority Rights Declaration* 11, 26 (Alan Phillips & Allan Rosas eds., 1993).

[40] *See supra* note 38.

Article XXVIII of the Arizona Constitution, which is clearly inconsistent with this nation's international obligations, were permitted to stand. As one writer has observed:

> [T]he expansion of internationally recognized collective rights could lead to conflict with American domestic policies. The United States cannot, without a fatal measure of hypocrisy, demand that foreign governments grant minority languages equal status and simultaneously insist on the dominant role of English within its own borders.[41]

II. ARTICLE XXVIII WOULD UNDERMINE RATHER THAN PROMOTE THE STATE INTERESTS IDENTIFIED BY THE PETITIONERS

A. Restrictions on the Use of Minority Languages Figure Prominently in the Policies of Repressive Governments

There is no merit to petitioners' claim that Article XXVIII, by restricting the use of languages other than English, will promote Arizona's interest in affirming its legitimacy. "Any forms of restriction, particularly those that affect people as intimately as languages, run counter to natural democratic tendencies."[42] Rather than reflecting a constructive attempt to build national unity, laws restricting the use of minority languages often represent one facet of a larger effort to marginalize, persecute or forcibly assimilate disfavored ethnic and cultural minorities.[43]

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[41] Robert Cullen, *Human Rights Quandary*, Foreign Aff., Winter 1992/93, at 79, 85.

[42] Erika Dailey, *Report on the Status of Non-Russian Languages in the USSR*, 1 Report on the USSR, No. 30, July 28, 1989, at 26, 28.

[43] *See* 2 Ostrower, *supra* note 8, at 667 (in the "processes of absorption and assimilation the first to be victimized [have been] the languages of minorities"); Phillipson, *supra* note 1, at 2 (observing that the suppression (continued...)

The "[s]uffocation of language has always been part of policies of domination."[44] It is not surprising then that policies restricting the use of minority languages have been employed with terrifying consistency by totalitarian governments. Thus, by attempting to eliminate the use of minority languages from the public sector, Arizona places itself—and, by extension, the United States—in the embarrassing company of some of the world's most repressive regimes.

1. The Former Soviet Union

In an attempt to suppress separatist movements and create one unified socialist culture,[45] the Soviet Union duplicated the Tsarist policy of "russifying" the cultures of the numerous ethnic minorities living within the empire.[46] As part of this assimilation effort, the Communist Party restricted the use of minority languages while requiring the use of Russian for all official communications.[47] Russian was declared the official form of expression in the Soviet Union and its use was mandated in public schools and government activities throughout the republics.[48]

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[43](...continued)
of certain individuals and groups is often carried out through language repression); Skutnabb-Kangas, *supra* note 4, at 11-14 (noting that ethnic, cultural and *linguistic* repression has replaced racism as the primary means of suppressing disfavored groups).

[44] Lador-Lederer, *supra* note 17, at 25.

[45] *See* Richard E. Weiner, *70 Languages Equal and Free?: The Legal Status of Minority Languages in the Soviet Union*, 6 Ariz. J. Int'l & Comp. L. 73, 78-79 (1989); 2 Ostrower, *supra* note 8, at 612-13.

[46] Uriel Weinreich, *The Russification of Soviet Minority Languages*, 2 Probs. of Communism, No. 6, 1953, at 46, 47.

[47] Weiner, *supra* note 45, at 78.

[48] *Id.*; 2 Ostrower, *supra* note 8, at 615; 1 *id.* at 476.

Despite internal resistance to Soviet linguistic repression,[49] the Party's efforts were largely successful. By the 1980's, Russian had largely taken the place of other languages in government administration, scholarly publications, secondary schools and universities throughout the Soviet Union.[50]

As the Soviet Union began to embrace reforms in the late 1980's, Moscow gradually relaxed prohibitions on the use of minority languages.[51] As one editorial in a Soviet newspaper commented in 1989, "'when we are putting stress on the broadening of rights and freedoms of every person and every people, enforced [use] of any language whatsoever throws us backward in the movement towards a democratic society.'"[52]

2. Franco's Spain

After solidifying his power in 1939, Franco forced Spain's Basque, Catalan and Galician minorities to comply with extremely repressive cultural and linguistic policies. In his effort to achieve national unity "by the use of force, repressive legal measures and adherence to a social philosophy of forced assimilationism,"[53] Franco declared Spanish the "language of the empire"[54] and prohibited the use of minority languages in any official or public capacity.[55] The regime proscribed the use of

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[49] *See* 2 Ostrower, *supra* note 8, at 620.

[50] Weiner, *supra* note 45, at 81, 84-85.

[51] *See* Dailey, *supra* note 42, at 27.

[52] *Id.* at 28 (quoting Pravda Vostoka, June 23, 1989, at 3).

[53] Juan Cobarrubias, "The Protection of Linguistic Minorities in the Autonomous Communities of Spain," *in Language and Law: Proceedings of the First Conference of the International Institute of Comparative Linguistic Law* 399, 409 (Paul Pupier & José Woehrling eds., 1988).

[54] Stanley G. Payne, *The Franco Regime 1936-1945* 231 (1987).

[55] Manuel Medina, "Spain: Regional, Linguistic and Ideological Conflict," *in* 1 *Case Studies on Human Rights and Fundamental Freedoms: A World Survey* 133, 140 (Willem A. Veenhoven ed., 1975); *see* Payne, (continued...)

the Catalan and Basque languages in the courts,[56] banned the Basque language from schools and public gatherings,[57] and declared all expression in the Catalan language outside the home a crime.[58] In addition, all Galician, Catalan and Basque language publications were abolished.[59]

3. Communist Romania

Prior to the Romanian Revolution of 1989, ethnic minorities in Romania were persecuted by the Communist regime's highly repressive policy of forced assimilation. The regime targeted ethnic Hungarians in particular due to their large numbers and strong ties to neighboring Hungary. As part of its campaign to "Romanianize" the two million ethnic Hungarians living in Romania, the Romanian government placed severe restrictions on the use of the Hungarian language in the media, universities, and religious and cultural institutions.[60] By the late 1980's, no language other than Romanian was tolerated in official and administrative functions and in public life generally.[61]

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[55](...continued)
supra note 54, at 231.

[56] Payne, *supra* note 54, at 231.

[57] Robert Clark, *The Basques: The Franco Years and Beyond* 137 (1979).

[58] David H. Rosenthal, *Thriving Without a State: After Years of Repression Catalans Have Revived their Language and Economy and are Winning Significant Autonomy From Spain*, The Atlantic, June 1989, at 20, 23; Medina, *supra* note 55, at 140.

[59] Jose Yglesias, *The Franco Years* 252 (1977); Payne, *supra* note 54, at 231.

[60] Helsinki Watch, *Since the Revolution: Human Rights in Romania* 15 (1991); Commission on Security and Cooperation in Europe, *Minority Rights: Problems, Parameters, and Patterns in the CSCE Context* 148-50 (1991) [hereinafter *Minority Rights*].

[61] Helsinki Watch, *Destroying Ethnic Identity: The Hungarians of Romania* 19-21 (1989).

4. Communist Bulgaria

Beginning in the early 1970's, the Bulgarian Communist regime harshly repressed ethnic Turks,[62] for example, by banning the teaching of classes in any language other than Bulgarian.[63] In late 1984, Bulgaria "embarked on a full-scale campaign to forcibly assimilate its estimated 1 million member Turkish minority."[64] Linguistic repression played a major role in this assault on Turkish identity. Fines were levied against individuals found speaking Turkish in public or possessing Turkish language publications.[65] Letters within Bulgaria, if written in Turkish, often did not reach their destinations.[66]

5. Nazi Germany

Although more extreme in its overall policy of ethnic repression and cultural annihilation, the dictatorship of Nazi Germany also persecuted people of disfavored ethnicities by prohibiting the use of their native languages. For example, as part of the Nazi plan to "render[] Poland harmless," members of Poland's "higher social strata were to be taken to concentration camps . . . [where] they would not be allowed to speak Polish."[67] In 1939, Adolf Hitler "spoke frankly and brutally of linguistic extermination . . . when he stated: 'I keep my "Skull and Crossbones" formations ready to kill, without mercy or pity, men, women and children of Polish origin and

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[62] *Minority Rights*, *supra* note 60, at 162.

[63] *Id.*; Helsinki Watch, *Destroying Ethnic Identity: The Expulsion of the Bulgarian Turks* 3 (1989).

[64] *Minority Rights*, *supra* note 60, at 162.

[65] *Id.* at 163; Helsinki Watch, *Destroying Ethnic Identity: The Turks of Bulgaria* 13 (1986).

[66] *Minority Rights*, *supra* note 60, at 163.

[67] 2 Ostrower, *supra* note 8, at 666 n.3 (citing Lord Russell of Liverpool, *The Record: The Trial of Adolf Eichmann for His Crimes Against the Jewish People and Against Humanity* 329-30 (1963)).

who speak Polish.'"[68] Also, as part of their campaign to purify the German language, the Nazis rejected the use of words that derived from foreign languages, often inventing new words to replace them.[69]

B. Restrictive Language Policies Inspire Resistance and Ignite Conflict

Equally meritless is petitioners' argument that Article XXVIII will promote Arizona's purported interest in "encouraging unity." The overwhelming evidence demonstrates that, far from promoting unity, policies curtailing the use of minority languages amplify the conditions that lead to disunity. This occurs, first, because such policies invariably inspire resistance or, as one study has stated, "a contrary reaction in favour of [minority] languages."[70] Second, absolute insistence on the use of an official language inevitably causes certain members of linguistic minority groups "to withdraw in some measure from the national life"[71]—a result hardly consistent with unity. Third, and far worse, attempts to banish minority languages from public life almost always ignite conflict, often violent, between linguistic minorities and speakers of the dominant language, and between different groups of linguistic minorities.

The potential for conflict that is created by restrictive language policies should not be underestimated:

[68] *Id.* at 666 (emphasis in original) (citing *We Have Not Forgotten* 8 (The League of Fighters for Freedom and Democracy ed., 1959)).

[69] 1 *The Encyclopedia of the Third Reich* 284 (Christian Zentner & Friedemann Bedürftig eds. & Amy Hackett ed. Eng. trans., 1991); Richard Grunberger, *The 12-Year Reich: A Social History of Nazi Germany 1933-1945* 329 (1971).

[70] Eugene A. Nida & William L. Wonderly, "Communication Roles of Languages in Multilingual Societies," *in Language Use and Social Change* 57, 63 (W.H. Whiteley ed., 1971).

[71] The Report of the UNESCO Meeting of Specialists, 1951, *reprinted in The Use of Vernacular Languages in Education* 45, 50 (1978).

> Language is for most ethnic groups one of the most important cultural core values. A threat to an ethnic group's language is thus a threat to the cultural and linguistic survival of the group. Lack of linguistic rights often prevents a group from achieving educational, economic and political equality with other groups. Injustice caused by *failure to respect linguistic human rights* is thus in several ways one of the important factors which can contribute to inter-ethnic conflict—and often does.[72]

In general, language-related conflicts arise not because linguistic minorities are different from speakers of the dominant language, but rather because "'*they are no longer allowed to be different.*'"[73] In other words, it is the denial—not the provision—of language rights that is at the root of the world's most severe language-related conflicts. The following examples illustrate the point:

- In 1977, the government of Quebec (headed by the separatist Parti Quebecois) enacted the Charter of the French Language, mandating the exclusive use of French in virtually all spheres of public and private life, and limiting access to English-language schools. The Charter's wide-ranging provisions have had a profoundly negative impact on Quebec's linguistic minorities, particularly the English-speaking minority, which now accounts for approximately ten percent of the province's overall population. At least 200,000 English speakers have emigrated from Quebec since the restrictive language laws were adopted. According to a 1988 survey, over three-quarters of expatriate Montrealers stated that the language laws influenced their decision to leave.[74] In addition, numerous Canadian businesses—including some of Quebec's largest companies—have chosen to move their headquarters out of the province rather

[72] Phillipson, *supra* note 1, at 7 (emphasis in original).

[73] *Id.* (emphasis in original) (quoting Björn Hettne, *Etniska konflikter och internationella relationer* 66-67 (1987)).

[74] Sarah Scott, *The Picture of Health*, The Gazette (Montreal), May 2, 1996, at A8.

than submit to the Charter's severe restrictions on the use of English in the workplace.[75]

In 1988, the Canadian Supreme Court declared several provisions of the Charter unconstitutional on the grounds that their outright prohibition of the use of a language other than French infringed upon the right to freedom of expression and the guarantee against discrimination based on language.[76] In 1993, the Quebec government revised certain aspects of the Charter to allow for greater use of languages other than French. However, the recent election of a Parti Quebecois government intent on reviving the Charter's more extreme provisions has fostered renewed fears of a linguistic crackdown among the province's English speakers.[77] According to a study conducted by a Montreal psychologist after the province's October 1996 referendum on separation, the renewed linguistic and political tensions have led to "flare-ups of chronic illnesses, sleep problems, forgetfulness, angry spells, increased alcohol use, feelings of despair and 'survivor guilt.'"[78] In addition, a recent survey of English-speaking youths in Quebec indicated that over seventy-five percent intend to leave the province because of language concerns.[79]

- In the early days of Pakistan's existence, the mere suggestion that the nation establish an official language proved a serious threat to federal unity. The recommendation of the Basic Principles Committee in its Interim Report to the Constituent Assembly that the nation adopt Urdu as its official language touched off such a storm of protest that the Committee omitted

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[75] Anne Swardson, *O, Montreal, City of Exodus*, Wash. Post, Mar. 21, 1996, at A25; Scott, *supra* note 74, at A8.

[76] *Attorney-General of Quebec* v. *La Chaussure Brown's Inc.*, 54 D.L.R. 4th 577 (Can. 1988).

[77] Scott, *supra note* 74, at A8; *see also* Elizabeth Thompson, *Anglos Warned of Backlash; Protests Might Bring Tougher Language Laws: Landry*, The Gazette (Montreal), Apr. 26, 1996, at A1.

[78] Swardson, *supra* note 75, at A25.

[79] Scott, *supra* note 74, at A8.

any reference to an official language in its next Report. To further ease the smoldering tensions, the Committee later recommended the recognition of two official languages, Urdu and Bengali. However, even this recommendation proved divisive, causing the drafters of the 1956 Constitution to dispense with the establishment of an official language and adopt both Urdu and Bengali as "State languages"—a decision which helped allay Bengali anxieties and reduce internal tensions between the two groups.[80]

- The 1956 report of India's first Official Language Commission recommending that Hindi replace English as the official language for federal affairs produced widespread popular demonstrations and the destruction of Hindi signs in the Dravidian-speaking southern region. The dissension caused the Congress Party to embrace a compromise during its 1958 annual session, which contemplated the establishment of both Hindi and English as official languages by 1965—a formula eventually adopted by the Indian Parliament.[81]

- In January 1989, the Supreme Soviet of Lithuania, under pressure from the growing nationalist movement in that republic, passed a controversial law making Lithuanian the republic's official language. Shortly thereafter, several rural district soviets in regions heavily populated by ethnic Poles passed resolutions proclaiming themselves autonomous and not bound by the new language law. On October 2, 1990, several months after Lithuania declared its independence from the Soviet Union, Lithuanian officials announced that implementation of the 1989 language law would be delayed. Unimpressed by the softening of the government's position, a congress of Polish deputies, on October 6, proclaimed the formation of a Polish National Territorial District encompassing five southeastern regions of Lithuania. In response, the Lithuanian Parliament, on November 25, 1990, formally delayed implementation of the

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[80] Ronald L. Watts, *Multicultural Societies and Federalism*, 8 Studies of the Royal Comm'n on Bilingualism & Multiculturalism 1, 80-81 (1970).

[81] *Id.* at 81-82.

language law until January 1995 in regions where non-Lithuanian speakers comprised the majority. In January 1991, Lithuania's Supreme Council made additional concessions, in the form of amendments to the 1989 law on ethnic minorities, which permitted equal use of minority languages in local administration and guaranteed to linguistic minorities the right to education in their native languages from pre-school through secondary school.[82]

- The vote on an October 1990 bill making Slovak the official language of Slovakia, thus prohibiting the republic's 600,000 ethnic Hungarians from using their own language in official dealings, caused thousands of protestors and counter-protestors to besiege the Slovak Parliament.[83] Fierce opposition to the bill forced the coalition government to add a provision guaranteeing linguistic minorities the right to communicate with authorities in their own languages in regions where they constituted at least twenty percent of the population.[84] In spite of the "compromise," implementation of the law produced widespread protest. In the summer of 1993, when local officials in southern Slovakia began replacing bilingual road signs with Slovak-only signs, the head of the village of Marclova, in which ethnic Hungarians constitute a majority, ordered a road blockade in retaliation. Slovakia's Hungarian leaders claimed that the removal of the bilingual signs was an act of manifest discrimination, and vowed to take their claims to the Council of Europe and other international bodies.[85]

In November 1995, the newly independent nation of Slovakia passed a law banning the use of all languages other than Slovak

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[82] *Minority Rights*, *supra* note 60, at 100-04.

[83] Henry Kamm, *Language Bill Weighed as Slovak Separatists Rally*, N.Y. Times, Oct. 25, 1990, at A15; *Slovak Now Official Language*, N.Y. Times, Oct. 26, 1990, at A6.

[84] *Slovak Now Official Language*, *supra* note 83, at A6; *see also* Kitty McKinsey, *Purifying Language: This Time, it's Slovakia*, The Gazette (Montreal), Mar. 3, 1996, at B1.

[85] *Bilingual Signs Dispute*, The Warsaw Voice, Aug. 22, 1993, *available in* LEXIS, Europe Library, WRSAWV File.

in state matters, courts and other legal proceedings, the armed forces, elementary and secondary schools, and virtually banning or mandating the subordination of other languages in other public spheres, such as the mass media, cultural events, public meetings, and public information regarding health and consumer information.[86] The new law drew protests not only from the nation's numerous ethnic Hungarians, who regarded it as a repressive attempt to assimilate them,[87] but from the international community as well. The day after the law was passed, the European Parliament passed a motion asking the Slovak government to "respect democratic principles."[88] The law also caused the United States to voice concerns about the state of democracy generally in the newly formed Slovakian state.[89]

- In Kosova, where ethnic Albanians constitute ninety percent of the population, a 1990 dictate from the ruling Serbian authorities making Serbian the exclusive language of that state inspired the Albanian leadership to organize an underground society—prompting one journalist to note that if war breaks out in that region, "the enforcement of an official language policy will be one of the main causes."[90]

- In 1989, a campaign by the legislature of Soviet Georgia to intensify the use of the Georgian language throughout the republic severely exacerbated tensions between Georgians and ethnic Ossetians, who, since 1922, occupied a region within Georgia known as the South Ossetian Autonomous Oblast, and

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[86] *See* Law of the National Council of the Slovak Republic, of 15th November 1995, on the State Language of the Slovak Republic, *reprinted in* Hospodarske noviny, Dec. 12, 1995, *translated in* CTK news agency, Prague, in English 2203 gmt, Dec. 13, 1995; McKinsey, *supra* note 84, at B1; *Slovak-Only Law Passed*, The Edmonton Journal, Nov. 17, 1995, at B4.

[87] McKinsey, supra note 84, at B1.

[88] Gwynne Dyer, *Language Fight Could Start War in Slovakia*, The Calgary Herald, Dec. 16, 1995, at A15.

[89] McKinsey, supra note 84, at B1.

[90] Aryeh Neier, *Watching Rights*, The Nation, Feb. 14, 1994, at 187.

make up roughly three percent of Georgia's total population. As a direct result of the perceived repression of their language, the Georgian Ossetians moved to make Ossetian the state language of the Oblast, and sought permission from Moscow to break with Georgia and join the autonomous republic of North Ossetia.[91]

- In Northern Ireland, the inability of Irish-speakers to communicate with their government in their own language contributed to the institution of the "O'Fiach Principles" on June 9, 1990, an initiative by Irish-speakers to establish a language rights charter.[92]

- French laws requiring ethnic Britons, Alsacians, Occitans, Savoyards, Corsicans and Basques to send their children to French-only schools has led to the virtual disappearance of those languages from France.[93] The repression of those languages, however, has not come without a price. Promotion of the Corsican language, for example, now figures prominently among the demands made upon the French government by the violent Corsican separatist movement.[94]

- In Sri Lanka, the 1956 passage of the Official Language Act designating Sinhala as the official language for government administration and education was intensely opposed by Sri Lanka's Tamil-speaking minorities, who constitute roughly twenty-five percent of the population. In 1956 and 1958, The Tamil Federal Party organized peaceful demonstrations in opposition to the law, which it regarded as discriminatory. In retaliation, Sinhalese partisans engaged in widespread rioting,

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[91] *Minority Rights*, *supra* note 60, at 66-67.

[92] Feilim O hAdmaill, *A Language Rights Charter for Irish Speakers*, Just News (Belfast), June 1990, at 5; *Update*, Just News (Belfast), July 1990, at 3.

[93] Matthew Fraser, *Manipulating Nationalism: The Parallels in France and Quebec*, The Gazette (Montreal), Aug. 7, 1994, at B1.

[94] Editorial, *The Corsican Debacle*, The Asian Wall Street Journal, June 3, 1996, at 8.

resulting in the deaths of hundreds of Tamils and making refugees out of thousands more. During this time, the Federal Party's demand for Tamil autonomy—first, under a federalist constitution, and later, as an independent nation—gained widespread support among the Tamil electorate.[95] The "Sinhala only" language policy was responsible, in significant part, for the civil war that erupted in Sri Lanka in the mid-1980's, which has since claimed 30,000 to 40,000 lives.[96]

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Although the citations can be multiplied, the above examples suffice to demonstrate that restrictive language policies tend to aggravate rather than alleviate conflict and discord. In recognition of that fact, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities proclaims that

> the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live.[97]

As the international human rights community has universally concluded, the solution to language-related problems is to protect—rather than impair—language rights.

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[95] Human Rights Watch, *Playing the "Communal Card": Communal Violence and Human Rights* 80-84 (1995).

[96] Neier, *supra* note 90, at 187.

[97] *See supra* note 38.

CONCLUSION

For the reasons set forth above, Human Rights Watch suggests that the decision below should be affirmed.

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Respectfully submitted,

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[98] This brief was prepared with the assistance of Kimberly D. Ockene and Lissette Pérez-Carrillo, who are not yet members of the bar.